

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
CHRISTINA ZACCARIA-BECKER, et al., :
Plaintiffs, :
: 24 Civ. 3746 (LGS)
-against- :
: ORDER
NATIONAL RAILROAD PASSENGER :
CORPORATION D/B/A AMTRAK, et al., :
Defendants. X

LORNA G. SCHOFIELD, District Judge:

WHEREAS, Defendants filed a notice of removal in this action on May 15, 2024.

WHEREAS, an Order dated May 23, 2024, directed Defendants to file any documents from the state court docket that were not attached to the May 15, 2024, notice of removal by May 28, 2024.

WHEREAS, Defendants did not file the additional documents.

WHEREAS, an Order dated May 30, 2024, directed Defendants to file any documents from the state court docket by June 3, 2024. The Order also directed Defendants to serve a copy of the Order on Plaintiffs and file proof of service by June 3, 2024, and directed Plaintiffs to appear in this action by June 17, 2024, or the action would be dismissed for failure to prosecute.

WHEREAS, Defendants have not filed the additional documents and have not filed proof of service.

WHEREAS, Plaintiffs have not appeared in this action.

WHEREAS, a case may be removed to federal court only “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” 28 U.S.C. § 1446(b)(1).

“[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3).

WHEREAS, a district court may *sua sponte* remand a case for a procedural defect within thirty days of the filing of the Notice of Removal. *See Mitskovski v. Buffalo & Fort Erie Pub. Bridge Auth.*, 435 F.3d 127, 131 (2d Cir. 2006);

WHEREAS, Defendants’ Notice of Removal is procedurally defective. Defendants’ Notice of Removal states that removal is timely but fails to demonstrate timeliness by attaching state court filings showing proof of service of the complaint on Defendants. Defendants twice have failed to file the state court filings at the direction of the Court. It is hereby

ORDERED that the matter is remanded to state court.

The Clerk of Court is respectfully directed to close the case and to mail a certified copy of this Order to the Supreme Court of the State of New York, New York County pursuant to 28 U.S.C. § 1447(c).

Dated: June 5, 2024
New York, New York



LORNA G. SCHÖFIELD
UNITED STATES DISTRICT JUDGE